



Appeal Decision

Site visit made on 3 September 2024

by K Lancaster BA (hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 OCTOBER 2024

Appeal Ref: APP/L5810/W/24/3339064

Phoenix Wharf, Eel Pie Island, Twickenham, London TW1 3DY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Henry Harrison on behalf of Riverwharf Ltd against the decision of Richmond Upon Thames London Borough Council.
 - The application Ref is 23/2769/GPD26.
 - The development proposed is described as the change of use from Business (Use Class E) to dwelling houses (Use Class C3) of the Upper Deck Units 3,4 and 6 Studio Building, Phoenix Wharf, Eel Pie Island, Twickenham.
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. Class MA of Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) permits the change of use of a building and any land within its curtilage from a use falling within Class E (commercial, business, and service) to a use falling within Class C3 (dwellinghouses). This is subject to limitations and conditions, as set out in subsequent paragraphs of Class MA.
3. Accordingly, I have only had regard to the development plan, emerging development plan, the National Planning Policy Framework and other documents referred to me by the main parties, in so far as they are material consideration relevant to matters of prior approval.
4. Paragraph MA.1 of Class MA sets out a number of requirements. The Council considers that the proposed development complies with the requirements set out in this paragraph. Based on the evidence before me, I see no reason to disagree.
5. Paragraph MA.2 sets out that development permitted under Class MA is permitted subject to an application to the local planning authority for determination as to whether prior approval is required in relation to the conditions set out in Paragraph MA.2(2). One of these conditions is MA.2(2)(c) which relates to flooding risks in relation to the building. The prior approval was refused on the basis that the proposed development would not meet the requirements of this condition.

6. The Council considered that the proposed development met all other conditions set out in Paragraph MA.2(2). Based on the evidence before me, I see no reason to disagree.
7. Accordingly, the main issue in this case is whether the proposal would be permitted development under Schedule 2, Part 3, Class MA of the GPDO, with particular regard to whether the proposal would satisfy condition MA.2(2)(c), in regard to the flooding risks to the building.

Reasons

8. Phoenix Wharf is located on Eel Pie Island, fronting onto the River Thames. The appeal site comprises, Units 3, 4 and 6 Phoenix Wharf, which are located on the first floor of the building. On one side of the complex is a two-storey building, comprising of twelve studios, six on the ground floor (lower deck) and six on the first and mezzanine floors (upper deck). All of the studios apart from the three units subject to this application are occupied and used for commercial purposes. On the other side of the complex is a boatyard, open to the River Thames with communal toilet facilities located at the rear of the ground floor of the building. The upper floor of the building is in part business use, part residential use. Eel Pie Island contains a mix of residential and commercial uses.
9. There is no vehicular access on to Eel Pie Island. Pedestrian access is via a footbridge from the Twickenham Riverside and then via a footpath which runs through the island to provide access to the properties on either side. At the eastern end of the path is the access to Phoenix Wharf.
10. The appeal site, including the sole means of access, is located within Flood Zone 3b, the functional floodplain. Paragraph 165 of National Planning Policy Framework (the Framework) states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Policy LP21 of the London Borough of Richmond upon Thames Local Plan, adopted July 2018 states that within Flood Zone 3b proposals for the change of use or conversion to a use with a higher vulnerability classification will not be permitted.
11. The proposed development comprises the change of use of three existing commercial units to provide three, one-bedroom dwellings. Whilst the new dwellings would be located on the first, and mezzanine floors of the building, the proposal would nevertheless involve the change of use of a 'less vulnerable' use to a 'more vulnerable' use. The Planning Practice Guidance¹ (the PPG) states that more vulnerable development in Flood Zone 3b should not be permitted.
12. The London Borough of Richmond upon Thames Strategic Flood Risk Assessment Update published March 2016 (SFRA) confirms that all of Eel Pie Island is designated as Flood Zone 3b. The SFRA states that in Flood Zone 3b, only water compatible or essential infrastructure, where the exception test has been passed, are appropriate uses. It states that Eel Pie Island has been given this designation due to the access and egress routes to and from the island being via a pedestrian foot bridge, which is located on the Twickenham Embankment side, an area which is also designated as a functional floodplain.

¹ Table 2: Flood Risk Vulnerability Classification

13. The SFRA also includes an assessment of hazard, calculated by combining depth of flood water and velocity. However, it also states that even disregarding velocity of flood water, in a flood event, the foot of the bridge would be located in water presenting 'Danger for Most', which includes the general public. As such, due to the significant risk involved, it advises that development within most vulnerability classifications will not be appropriate here.
14. Paragraph 173 of the Framework states that development should only be allowed in areas at risk of flooding where safe access and escape routes are included where appropriate, as part of an agreed emergency plan. The appellant states that safe access and egress is achievable should flood warnings be provided on time. However, these warnings would not be guaranteed to work if the flood event occurred during the night when future occupants are asleep. It would place future occupants at greater and unnecessary risk from flooding and its consequences.
15. Furthermore, the provision of additional residential units in this area would increase the burden on emergency services and add to the risk to trained personnel, were a flood to occur. This also means that the proposal would not be safe for its lifetime and would not ensure the safety of the people within a building, contrary to the guidance in the PPG.
16. Although I acknowledge that there are a number of existing residential properties located on Eel Pie Island, including some located close to the appeal site, the proposal would increase the overall number of residential units on the island. This would undoubtedly increase the risk to life and property, with future occupiers of the proposed residential units unable to escape the building during a flood event. I also accept that the proposal relates to the use of the first and mezzanine floors of the building, and that, based on the evidence before me, there would be no significant flood risk to the proposed dwellings themselves. However, this is not sufficient to outweigh the inadequate provision of a safe escape route.
17. Whilst I note the appellant's frustration that flood risk was not given as a reason for refusal on the previous submission², the flooding risks in relation to the building is a condition of Class MA which must be satisfied before prior approval can be granted. Therefore, notwithstanding any previous advice which may have been provided, I need to be satisfied that the proposal would meet the requirements of condition MA.2(2)(c) of Class MA.
18. Consequently, based on the evidence before me, I cannot be certain that the proposed development would have an acceptable effect on flood risk or the safety of future occupants. Therefore, I find that the proposal would not satisfy condition MA.2(2)(c) in regard to the flooding risks of the building.

Other Matters

19. There is no vehicular access to the appeal site and the proposal would provide a car free development. A signed Unilateral Agreement providing for this is included with the appeal. It would place restrictions on future occupiers being able to obtain a residents parking permit and to encourage residents to not own a car and to have membership of a car club as an alternative. However,

² Planning Application Ref: 22/3063/GPD26

for the reasons set out above, the proposal would not be permitted development, therefore, I have not considered this matter further because it could not lead me to a different decision.

Conclusion

20. For the above reasons, I conclude that the proposal would not be permitted development under Schedule 2, Part 3, Class MA of the GPDO having regard to its flood risk. The appeal should therefore be dismissed.

K Lancaster

INSPECTOR